

STEWART L. ASHTON

IBLA 87-689

Decided February 6, 1989

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring the Bell Boy and Bell Boy Placer mining claims null and void ab initio. UMC 120063.

Appeal dismissed in part and decision affirmed.

1. Appeals: Generally--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Timely Filing

A party who is adversely affected by a decision of an officer of BLM may appeal that decision to the Board of Land Appeals. However, a notice of appeal must be filed with BLM within 30 days after the date of service. The timely filing of a notice of appeal is jurisdictional. The failure to file within the time allowed renders the decision final and requires dismissal of the appeal.

2. Mining Claims: Land Subject to--Withdrawals: Reclamation Withdrawals

A mining claim located on lands subject to a first-form withdrawal at the time of location is null and void ab initio.

APPEARANCES: Stewart L. Ashton, Vernal, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Stewart L. Ashton (Ashton) has appealed from a July 7, 1987, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the "Bell Boy" and "Bell Boy Placer" placer mining claims (UMC 120063) null and void ab initio 1/ because the land upon which the claims were located was withdrawn from mineral entry at the time of location.

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1/ The decision heading incorrectly declares the claims are abandoned and void ab initio. What was clearly intended was to declare the claims null and void ab initio. If a claim is null and void ab initio there is nothing to abandon.

A note of explanation is necessary before addressing the issues. In 1979 Ashton filed notices of location for the claims in question and other claims pursuant to 43 U.S.C. § 1744 (1982). When assigning serial numbers to the claims BLM erroneously considered the location notice for the "Bell Boy" to be an amendment of the "Bell Boy Placer," and assigned serial number UMC 120063 to what it believed to be a single claim. In 1981 Ashton advised BLM of its error and the claims were recognized as being separate claims. However, no serial number was issued for the Bell Boy claim. Both continue to have the same serial number.

[1] We will first address this appeal as it relates to the Bell Boy Placer claim. On October 23, 1984, the Utah State Office issued a decision declaring the Bell Boy Placer claim and other named claims null and void ab initio because the lands upon which the claims were located had been segregated from mineral entry at the time of location. <sup>2/</sup> On July 27, 1985, Ashton registered an objection to that decision.

A party who is adversely affected by a decision of an officer of BLM may appeal that decision to this Board. 43 CFR 4.410. However, the notice of appeal must be lodged with BLM within 30 days after the date of service. 43 CFR 4.411(a). The timely filing of a notice of appeal is jurisdictional and failure to file a notice of appeal within the time allowed requires dismissal of the appeal. 43 CFR 4.411(c); Oscar Mineral Group #3, 87 IBLA 48 (1985). Ashton's failure to file a timely appeal from the October 23, 1984, BLM decision rendered that decision final for the Department. As the October 23, 1984, decision is final, this appeal is dismissed as to the Bell Boy Placer mining claim. <sup>3/</sup>

[2] The Bell Boy mining claim was not named in the 1984 decision, and Ashton's notice of appeal from the July 7, 1987, BLM decision was filed in a timely manner. We will, therefore, address that portion of the decision pertaining to the Bell Boy mining claim.

The notice of location for the Bell Boy mining claim filed with BLM on October 27, 1979, states that the claim was located as a placer claim on July 1, 1930. The land claimed is described as "Lot 1, Sec. 34, N1/2NW1/4 and SW1/4NW1/4 Sec. 35, To. 6 S., R. 21 E., S.L.M., area 148.30 acres."

The July 7, 1987, decision stated BLM's determination that

at the time of location of these claims the lands were closed to location pursuant to first-form withdrawals which were issued on February 17, 1909 and on July 28, 1916. These withdrawals were

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<sup>2/</sup> The decision listed the claims by claim name and did not include serial numbers.

<sup>3/</sup> It should be noted, however, that if the appeal had been timely, the result would have been unchanged for the underlying reasons stated below with respect to the Bell Boy claim.

issued by the acting secretary under the authority of the Act of June 17, 1902, 32 Stat. 388. The act restricted entry of these lands to solely entry under the homestead laws. Therefore mineral entry was prohibited, and these claims were null and void ab initio.

The record contains a copy of the first-form reclamation withdrawal order, dated July 28, 1916, withdrawing from entry those lands listed in that order, including "T. 6 S., R. 21 E., sections \* \* \* 11 to 36 inclusive." First-form reclamation withdrawals for lands required for irrigation works were made pursuant to section 3 of the Act of June 17, 1902, 43 U.S.C. | 416 (1970). <sup>4/</sup> Subsequent to the date of withdrawal a number of partial revocations were issued, but the withdrawal of secs. 34 and 35 remained in effect until October 28, 1937.

It is well established that a mining claim located on lands subject to a first-form withdrawal at the time of location is null and void ab initio. William B. Rawlings, 85 IBLA 243 (1985); Ronald W. Ramm, 67 IBLA 32 (1982); Susan E. Mitchell, 53 IBLA 42 (1981). The lands upon which appellant located the Bell Boy mining claim were subject to a first-form reclamation withdrawal at the time of location.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed in part and the decision appealed from is affirmed.

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R. W. Mullen  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge

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<sup>4/</sup> Repealed in part effective Oct. 21, 1976, section 704(a), Federal Land Policy and Management Act of 1976, 90 Stat. 2792.